

## GENERAL NOTICES ALGEMENE KENNISGEWINGS

### NOTICE 12 OF 2011

#### DEPARTMENT OF ENVIRONMENTAL AFFAIRS

#### NATIONAL ENVIRONMENTAL MANAGEMENT: AIR QUALITY ACT, 2004 (ACT NO. 39 OF 2004)

#### PROPOSED REGULATIONS REGARDING THE PHASING-OUT AND MANAGEMENT OF OZONE DEPLETING SUBSTANCES IN THE REPUBLIC OF SOUTH AFRICA

I, Bomo Edith Edna Molewa, Minister of Water and Environmental Affairs, hereby give notice of my intention to, under paragraphs (a), (e), (k) and (p) of section 53, read with section 57 of the Act, make the regulations regarding the phasing-out and management of ozone depleting substances in the Republic of South Africa in the Schedule hereto.

Members of the public are invited to submit to the Minister, within 60 days of publication of the notice in the *Gazette*, written comments or objections to the draft regulations to the following addresses:

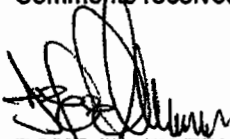
By post to:     The Director-General: Environmental Affairs  
                  Attention: Mr Sibusiso Shabalala  
                  Private Bag X447  
                  Pretoria, 0001

By fax to: (012) 322-5545, and by e-mail to [sshabalala@environment.gov.za](mailto:sshabalala@environment.gov.za)

Hand delivered at: 315 Pretorius Street, Corner Pretorius and Van Der Walt Streets, Fedsure Forum Building, 2nd Floor, North Tower.

Any inquiries in connection with the draft regulations can be directed to Mr. Victor Loate at (012) 310-3744 or Mr Sibusiso Shabalala at (012) 310-3449.

Comments received after the closing date may not be considered.



**BOMO EDITH EDNA MOLEWA**  
**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

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## CHAPTER 1

### PURPOSE OF REGULATIONS AND DEFINITIONS

#### 1. Purpose of regulations

The purpose of the regulations is to regulate phasing out and management of the ozone depleting substances as required by the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.

#### 2. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context indicates otherwise —

**“atmospheric emission licence”** means an atmospheric emission licence contemplated in Chapter 5 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);

**“approved inspection authority”** means an organisation is accredited by the South African Bureau of Standards in terms of the South African National Standards 10227, and approved by the chief inspector in terms of the vessels under pressure regulations, published under the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

**“commission”** has the meaning assigned to it in section 1 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

**“controlled substances”** means the ozone depleting substances listed in appendix-A to these regulations, whether alone or in a mixture, and whether they are virgin, recovered, recycled or reclaimed, excluding any controlled substances which is in a manufactured product other than a container used for the transportation or storage of that substance, or insignificant quantities of any controlled substance, originating from inadvertent or coincidental production during a manufacturing process, from unreacted feedstock, or from use as a processing agent which is present in chemical substances as trace impurities, or that is emitted during product manufacture or handling;

**“Convention”** means the Vienna Convention for the Protection of the Ozone Layer;

**“critical use”** means the process, established under the Protocol, to permit the import of a phased out controlled substance for uses that do not have technically and economically feasible alternatives;

**“Department”** means the Department of Environmental Affairs;

**“Director-General”** means the Director-General: Environmental Affairs;

**“destruction”** means a process, when applied to controlled substances, resulting in the permanent transformation or decomposition of all or a significant portion of such substances;

**“destruction facility”** means a destruction facility contemplated in regulation 15;

**“export”** has the meaning assigned to it in section 1 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

**“feedstock”** means any controlled substance or new substance that undergoes chemical transformation in a process in which it is entirely converted from its original composition and whose emissions are insignificant;

**“financial year”** has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“import”** has the meaning assigned to it in section 1 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

**“Minister”** means the Minister of Water and Environmental Affairs;

**“ozone-depleting substances”** means a substance having chemical or physical properties which, by its release into the atmosphere, can cause a depletion of the stratospheric ozone layer;

**“Party”** means any party to the Protocol;

**“placing on the market”** means the supplying or making available to third persons, against payment or free of charge, of controlled substances or products containing controlled substances covered by this regulation;

**“production”** means the amount of controlled substances produced, less the amount destroyed by technologies approved by the Parties and less the amount entirely used as feedstock or as a processing agent in the manufacture of other chemicals. No amount recovered, recycled or reclaimed shall be considered as ‘production’.

**“processing agent”** means controlled substances used as chemical processing agents and where emissions are insignificant;

**“Protocol”** means the Montreal Protocol on Substances that Deplete the Ozone Layer, as last amended and adjusted;

**“recovery”** has the meaning assigned to it in section 1 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

**“recycling”** has the meaning assigned to it in section 1 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

**“reclamation”** means the reprocessing and upgrading of a recovered controlled substance through such processes as filtering, drying, distillation and chemical treatment in order to restore the substance to a specified standard of performance;

**“respondent”** means a person who submits a responding statement in terms of sub-regulation 26(1);

**“State not party to the Protocol”** with respect to a particular controlled substance, includes any State or regional economic integration organisation that has not agreed to be bound by the provisions of the Protocol applicable to that substance;

**“waste management licence”** means a licence issued in terms of section 49 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

## CHAPTER 2

### PHASE-OUT SCHEDULES

#### 3. Control of production of certain ozone depleting substances

The production of the following ozone depleting substances is prohibited:

- (a) chlorofluorocarbons;
- (b) other fully halogenated chlorofluorocarbons;
- (c) halons;
- (d) carbon tetrachloride;
- (e) 1,1,1 –trichloroethane;
- (f) hydrobromofluorocarbons; and
- (g) bromochloromethane.

#### 4. Control of importation of certain ozone depleting substances

The importation of the following ozone depleting substances is prohibited:

- (a) chlorofluorocarbons;
- (b) other fully halogenated chlorofluorocarbons;

- (c) halons;
- (d) carbon tetrachloride;
- (e) 1,1,1 –trichloroethane;
- (f) hydrobromofluorocarbons; and
- (g) bromochloromethane.

**5. Control of the placing on the market and use of certain ozone depleting substances**

- (1) Subject to subregulations (3) and (9), the placing on the market and use of the following ozone depleting substances is prohibited:
  - (a) chlorofluorocarbons;
  - (b) other fully halogenated chlorofluorocarbons;
  - (c) halons;
  - (d) carbon tetrachloride;
  - (e) 1,1,1 –trichloroethane;
  - (f) hydrobromofluorocarbons; and
  - (g) bromochloromethane.

***Halons***

- (2)(a) Subregulation (1) shall not apply to the placing on the market and use of halons that have been recovered, recycled, or reclaimed in existing fire protection systems until 31 December 2012 or to the placing on the market and use of halons for critical uses.
- (b) No person is allowed to destroy halons except for a destruction facility authorised under regulation 15.
- (c) Any person wanting to use recycled halons for critical use, after 31 December 2012, must apply, for approval, to the Department. The application must in a letter format set out:
  - (i) applicant's details;
  - (ii) brief description of applicant business activity in relation to the use of halons;
  - (iii) quantities of halons requested for critical use;

- (iv) measures in place to reduce the emissions and an estimate of such emissions; and
  - (v) current activities underway or in place to identify and use adequate alternatives.
- (d) Any person placing on the market and using halons, after 31 December 2012, without an approval from the Department is committing an offence.

**Methyl Bromide (MeBr)**

- (3) The following, read with Appendix-B, is the phase-out schedule for South Africa:
- (a) methyl bromide which importers place on the market or use for their own account, in the period 1 January 2011 to 31 December 2011, will be reduced by 20% of the calculated level of methyl bromide which importers placed on the market or used for their own account in 2010.
  - (b) methyl bromide which importers place on the market or use for their own account, in the period 1 January 2012 to 31 December 2012, will be reduced by 20% of the calculated level of methyl bromide which importers placed on the market or used for their own account in 2011.
  - (c) methyl bromide which importers place on the market or use for their own account, in the period 1 January 2013 to 31 December 2013, will be reduced by 20% of the calculated level of methyl bromide which importers placed on the market or used for their own account in 2012.
  - (d) methyl bromide which importers place on the market or use for their own account, in the period 1 January 2014 to 31 December 2014, will be reduced by 20% of the calculated level of methyl bromide importers placed on the market or used for their own account in 2013.
- (4) The Department may, to the extent permitted by the Protocol and following a request by the importer, apply to the Ozone Secretariat for an exemption to exceed the amount to be consumed that year where it can be demonstrated by the importer that the use of the methyl bromide is necessary to meet the needs of the country.
- (5) No person is allowed to import, place on the market or use for their own account methyl bromide after 1 January 2015.

Provided that the Department may, to the extent permitted by the Protocol and following a request by the importer, apply to the Ozone Secretariat for an exemption use where it can be demonstrated by the importer that the use of the methyl bromide after phase-out is necessary to meet the needs of the country, because technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment are not available.



**Hydrochlorofluorocarbons (HCFCs)**

- (6) The following, read with Appendix-C, is the phase-out schedule for South Africa:
- (a) the hydrochlorofluorocarbons which importers place on the market or use for their own account, in the period 1 January 2016 to 31 December 2019, must not exceed 90% of the calculated level of hydrochlorofluorocarbons which importers placed on the market or used for their own account in 2009/10 financial year.
  - (b) the hydrochlorofluorocarbons which importers place on the market or use for their own account, in the period 1 January 2020 to 31 December 2024, must not exceed 65% of the calculated level of hydrochlorofluorocarbons which importers placed on the market or used for their own account in 2009/10 financial year.
  - (c) the hydrochlorofluorocarbons which importers place on the market or use for their own account, in the period 1 January 2025 to 31 December 2029, must not exceed 32.5% of the calculated level of hydrochlorofluorocarbons which importers placed on the market or used for their own account in 2009/10 financial year.
  - (d) the hydrochlorofluorocarbons which importers place on the market or use for their own account, in the period 1 January 2030 to 31 December 2039, must not exceed 2.5% of the calculated level of hydrochlorofluorocarbons which importers placed on the market or used for their own account in 2009/10 financial year.
- (7) No person is allowed to import, place on the market or use for their own account hydrochlorofluorocarbons after 1 January 2040.
- (8) By way of an exception to subregulation (1), the use of the ozone depleting substances listed in subregulation (1) is allowed:
- (a) in laboratory uses, including research and development;
  - (b) as feedstock; and
  - (c) as a processing agent.
- (9) The use of hydrochlorofluorocarbons as fire-fighting agents in existing fire protection systems is allowed for replacing halons. Such permission may be given after a written representation, in a form of a letter, to the Department indicating whether:
- (a) the halons contained in such fire protection systems will be replaced completely;
  - (b) the halons withdrawn will be destroyed.

- 6. Control of the importation and placing on the market of products containing certain ozone depleting substances**
- (1) The importation and placing on the market of products and equipment containing the following ozone depleting substances is prohibited:
- (a) chlorofluorocarbons;
  - (b) other fully halogenated chlorofluorocarbons;
  - (c) halons;
  - (d) carbon tetrachloride;
  - (e) 1,1,1 –trichloroethane;
  - (f) hydrobromofluorocarbons; and
  - (g) bromochloromethane.
- (2) The provisions of the regulations are not applicable to products and equipment containing the controlled substances in subregulation (1) which were manufactured before the coming into operation of the regulations.
- (3) The importation and placing on the market of products and equipment containing the ozone depleting substances listed in subregulation (1) for which a use restriction is in force under regulation 6 is prohibited from the date on which the use restriction comes into force.
- (4) The provisions of subregulation (3) are not applicable to products and equipment manufactured before the date of the use restriction.

### **CHAPTER 3**

#### **APPLICATIONS FOR IMPORT AND EXPORT CONTROL PERMITS AND TRADE MATTERS**

- 7. Identification of licensing authority**
- (1) An application for import or export control permit for controlled substances must be submitted to the Commission.
- (2) The application will be decided in accordance with the provisions of the International Trade Administration Act, 2002 (Act No. 71 of 2002).

**8. Importation of methyl bromide and hydrochlorofluorocarbons**

- (1) The importation of methyl bromide is subject to the South Africa's phase-out schedule as set out in regulation 5(4) read with Appendix-B.
- (2) The importation of hydrochlorofluorocarbons is subject to the South Africa's phase-out schedule as set out in regulation 5(7) read with Appendix-C.
- (3) The Department's recommendation to the licensing authority on importation of methyl bromide will be undertaken in consultation with the Department of Agriculture, Forestry and Fisheries.

**9. Imports of controlled substances from a State not party to the Protocol**

The importation of controlled substances from any State not party to the Protocol is prohibited.

**10. Imports of products containing controlled substances from a State not party to the Protocol**

The importation of products and equipment containing controlled substances from any State not Party to the Protocol are prohibited.

**11. Exports of certain ozone depleting substances or products containing certain ozone depleting substances**

- (1) The exportation of the following ozone depleting substances is prohibited:
  - (a) chlorofluorocarbons,
  - (b) other fully halogenated chlorofluorocarbons,
  - (c) halons,
  - (d) carbon tetrachloride,
  - (e) 1,1,1-trichloroethane,
  - (f) hydrobromofluorocarbons,
  - (g) bromochloromethane, or
  - (h) products and equipment, other than personal effects, containing those substances or whose continuing function relies on supply of those substances.
- (2) The prohibition in subregulation (1) shall not apply to exports in respect of:

- (a) controlled substances to be used for feedstock and processing agent applications;
  - (b) metered dose inhalers and delivery mechanisms containing chlorofluorocarbons for hermetically sealed devices for implantation in the human body for delivery of measured doses of medication.
- (3) The export of methyl bromide to any State not party to the Protocol is prohibited.
- (4) The export of hydrochlorofluorocarbons to any State not party to the Protocol is prohibited.

**12. Domestic sales of certain ozone depleting substances**

- (1) The domestic sale of the following ozone depleting substances is prohibited:
  - (a) chlorofluorocarbons;
  - (b) other fully halogenated chlorofluorocarbons;
  - (c) halons;
  - (d) carbon tetrachloride;
  - (e) 1,1,1 –trichloroethane;
  - (f) hydrobromofluorocarbons; and
  - (g) bromochloromethane.
- (2) Subject to subregulation (1), the domestic sale of the ozone depleting substances listed in subregulation (1) may be allowed following an application for approval to the Department.
- (3) The application for approval must, in a letter format, comply with the following requirements:
  - (a) applicant name and physical address;
  - (b) description of applicant business activities;
  - (c) type of ozone depleting substance to be sold;
  - (d) quantity of ozone depleting substance to be sold;
  - (e) source of origin of the ozone depleting substance;
  - (f) name and physical address of the buyer; and

- (g) buyer's business activities.

#### **CHAPTER 4**

#### **RECOVERY, RECYCLING AND DESTRUCTION OF CONTROLLED SUBSTANCES**

##### **13. Recovery and recycling facility**

- (1) A person undertaking or conducting a recovery and recycling of controlled substances must apply for a waste management licence by lodging an application with the licensing authority in terms of chapter 5 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).
- (2) The provisions of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) apply to all applications mentioned in subregulation (1) and both an applicant and the licensing authority must comply with those provisions and any waste management licence notices issued or regulations made in relation to those provisions.

##### **14. Destruction facility**

- (1) A person must apply for an atmospheric emission licence by lodging with the licensing authority of the area in which the destruction facility is or is to be carried out, an application in terms of chapter 5 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).
- (2) The provisions of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) apply to all destruction facility applications and both an applicant and the licensing authority must comply with those provisions and any atmospheric emission licence notices issued or regulations made in relation to those provisions.

#### **CHAPTER 5**

#### **EMISSIONS CONTROL**

##### **15. Recovery of used controlled substances**

- (1) Controlled substances contained in:
- (a) refrigeration, air-conditioning and heat pump equipment, except domestic refrigerators and freezers,
  - (b) equipment containing solvents,
  - (c) fire protection systems and fire extinguishers,

must be recovered and recycled by a recovery and recycling facility or disposed at a destruction facility during the servicing and maintenance of the equipment or before the dismantling or disposal of equipment.

- (2) Controlled substances contained in products, installations and equipment other than those mentioned in subregulation (1) must be recovered, where practicable, and dealt with as provided in subregulation (1).

#### **16. Leakages of controlled substances**

- (1) All precautionary measures practicable must be undertaken to prevent and minimise leakage of controlled substances.
- (2) All fixed equipments, containing controlled substances with a refrigerating fluid charge of more than 3kg, must, annually, be checked for any leakages by an approved inspection authority.
- (3) Where a test carried out in terms of subregulation (2) reveals any leaks on the fixed equipment, the approved inspection authority must immediately report such leaks to the owner of the fixed equipment and the owner shall forthwith cease the use of such equipment until such leakages has been fixed to the satisfaction of the approved inspection authority.
- (4) The owner of the fixed equipment must, within 14 days after being informed about the leakage, report such leakage to the Director-General in order to enable the initial evaluation of the leakage. The report to the Director-General must include:
  - (a) the extent of the leakage;
  - (b) the controlled substance leaked, an estimation of the quantity released, its possible impact to the atmosphere and any data needed to assess this impact;
  - (c) measures taken to minimise atmospheric impact;
  - (d) causes of the leakage, whether direct or indirect, including equipment, technology, system, or management failure; and
  - (e) measures to be taken to avoid a recurrence of such leakage.
- (5) The owner of fixed equipment containing controlled substances shall keep on the premises a record, which shall be open for inspection by an environmental management inspector and in which the results of all inspections and tests shall be recorded, dated and signed by the approved inspection authority.

- (6) All precautionary measures practicable must be undertaken to prevent and minimise leakages of methyl bromide fumigation installations and operations in which methyl bromide is used.
- (7) The use of virtually impermeable films for a sufficient time or other techniques ensuring at least the same level of environmental protection, whenever methyl bromide is used in soil fumigation, is mandatory.
- (8) All precautionary measures practicable must be taken to prevent and minimise leakages of controlled substances used as feedstock and processing agents.
- (9) All precautionary measures practicable must be undertaken to prevent and minimise leakages of controlled substances inadvertently produced in the course of the manufacture of other chemicals.

**17. Discharge or release of controlled substances**

The discharge or release into the atmosphere of the following ozone depleting substances is prohibited:

- (a) chlorofluorocarbons;
- (b) other fully halogenated chlorofluorocarbons;
- (c) halons;
- (d) carbon tetrachloride;
- (e) 1,1,1 –trichloroethane;
- (f) hydrobromofluorocarbons; and
- (g) bromochloromethane.

**CHAPTER 6**

**INFORMATION MANAGEMENT**

**18. Importers and exporters of hydrochlorofluorocarbons and methyl bromide**

- (1) An importer of methyl bromide or hydrochlorofluorocarbons must, annually, at the end of January every year, report his total quantities imported for the previous year to the Department.

- (2) An exporter of methyl bromide or hydrochlorofluorocarbons must, annually, at the end of January every year, report his total quantities exported for the previous year to the Department.
- (3) The format of the report contemplated in subregulations (1) and (2) must be in a table containing the following information:
  - (a) importer or exporter name,
  - (b) physical address,
  - (c) name, surname and contact details of responsible person,
  - (d) import or export permit number(s) issued in terms of the International Trade Administration Commission Act, 2002,
  - (e) total quantities of controlled substance(s) imported or exported for the reporting period in question,
  - (f) any quantities of used controlled substance(s) imported for recycling or reclamation,
  - (g) any quantities of controlled substances imported for feedstock and processing agent uses, for essential or critical uses, and
  - (h) any stocks.
- (4) Before the end of January every year, each user who has been authorised to take advantage of an essential use exemption must, for each controlled substance, report to the Department the nature of the use, the quantities used during the previous year, the quantities held in stock, any quantities recycled or destroyed, and the quantity of products containing those controlled substances placed on the markets or exported.
- (5) Before the end of January every year, each importer which has been authorised to use controlled substances as a processing agent must report to the Department the quantities used during the previous year.
- (6) An importer and exporter contemplated in subregulations (1) and (2) must keep a copy of the annual report for 5 years after submission to the Department.

**19. Recovery and recycling facility**

- (1) The holder of a waste management licence for a recovery and recycling facility must, annually, at the end of January every year, report the total quantities recovered and recycled for the previous year to the Department.



- (2) The format of the report contemplated in subregulation (1) must be in a table containing the following information:
- (a) recovery and recycling facility name,
  - (b) physical address,
  - (c) name, surname and contact details of responsible person,
  - (d) recovery and recycling facility licence number,
  - (e) type of controlled substances recovered and recycled for the reporting period in question, and
  - (f) total quantities of controlled substances recovered and recycled for the reporting period in question.
- (3) The owner of the recovery and recycling facility must keep a copy of the annual report for 5 years after submission to the Department.

**20. Destruction facility**

- (1) The holder of an atmospheric emission licence for a destruction facility must, annually, at the end of January every year, report the total quantities destroyed at the facility for the previous year to the Department.
- (2) The format of the report contemplated in subregulation (1) must be in a table containing the following information:
- (a) destruction facility name,
  - (b) physical address,
  - (c) name, surname and contact details of responsible person,
  - (d) destruction facility licence number,
  - (e) type of controlled substances destroyed for the reporting period in question, and
  - (f) total quantities of controlled substances destroyed for the reporting period in question.
- (3) The holder of an atmospheric emission licence for a destruction facility must keep a copy of the annual report for 5 years after submission to the Department.

## CHAPTER 7

### APPEALS

#### 21. Application of this Chapter

This Chapter applies to decisions that were taken by the Department under regulations 5(3)(c), 5(10) and 12(2).

#### 22. Jurisdiction of Minister to decide appeals

An appeal against a decision taken by the Department under regulations 5(3)(c), 5(10) and 12(2) must be lodged with the Minister.

#### 23. Notices of intention to appeal

- (1) A person affected by a decision referred to in regulation 21 who wishes to appeal against the decision, must lodge a notice of intention to appeal with the Minister within 10 days after that person has been notified of the decision.
- (2) The appellant must serve on the Department and any affected person:
  - (a) a copy of the notice referred to in subregulation (1); and
  - (b) a notice indicating where and for what period the appeal submission will be available for inspection by such person or the Department.
- (3) The Minister may, in writing, on good cause extend the period within which a notice of intention to appeal must be submitted.

#### 24. Submission of appeals

- (1) An appeal must be submitted in a letter format setting out the following:
  - (a) background to the appeal; and
  - (b) a statement setting out the grounds of appeal.
- (2) An appeal must be accompanied by:
  - (a) supporting documentation which is referred to in the appeal and which is not in the possession of the Minister; and
  - (b) the prescribed appeal fee, if any.

**25. Time within which appeals must be lodged**

- (1) An appeal must be submitted to the Minister within 30 days of the lodging of the notice of intention to appeal referred to in regulation 23(1).
- (2) The Minister may, in writing, on good cause extend the period within which an appeal must be submitted.

**26. Responding statements**

- (1) The Department or any person who receives a notice in terms of regulation 23(2) may submit to the Minister a responding statement within 30 days from the date the appeal submission was made available for inspection.
- (2)(a) The Department or any person who submits a responding statement in terms of subregulation (1) must serve a copy of the statement on the appellant.
- (b) If a respondent introduces any new information not dealt with in the appeal submission of the appellant, the appellant is entitled to submit an answering statement to such new information to the Minister within 30 days of receipt of the responding statement.
- (c) The appellant must serve a copy of the answering statement on the respondent who submitted the new information.
- (3) The Minister may, in writing, on good cause extend the period within which responding statements in terms of subregulation (1) or an appellant's answering statement in terms of subregulation (2)(b) must be submitted.

**27. Processing of appeals**

- (1) The Minister must acknowledge receipt of an appeal, responding statement or answering statement within 10 days.
- (2) The Minister may request the appellant or a respondent to submit such additional information in connection with the appeal as the Minister may require.

**28. Appeals panel**

- (1) If the Minister appoints an appeal panel, the Minister must furnish the panel with a written instruction concerning:
  - (a) the issues in respect of which the panel must make recommendations; and
  - (b) the period within which recommendations must be submitted to the Minister.

- (2) An appellant and each respondent are entitled to be notified of the appointment of an appeal panel, if the Minister appoints an appeal panel for the purposes of the appeal.
- (3) A member of an appeal panel must be independent.
- (4) If an appeal panel introduces any new information not dealt with in the appeal submission of the appellant or in the statements of the respondents, both the appellant and each respondent are entitled to submit to the panel, within a period determined by the panel, any additional statements rebutting or supporting such new information.
- (5) An appeal panel must submit its recommendations to the Minister in writing.

## **29. Decision on appeals**

- (1) When the Minister has reached a final decision on an appeal, the appellant and each respondent must be notified of the decision and the extent to which the decision appealed against is upheld or overturned in writing.
- (2) Reasons for the decision must on written request be given to the appellant or a respondent in writing.

## **CHAPTER 8**

### **GENERAL MATTERS**

## **30. General prohibition on stockpiling of certain ozone depleting substances**

- (1) The stockpiling of the following ozone depleting substances is prohibited:
  - (a) chlorofluorocarbons;
  - (b) other fully halogenated chlorofluorocarbons;
  - (c) halons;
  - (d) carbon tetrachloride;
  - (e) 1,1,1 –trichloroethane;
  - (f) hydrobromofluorocarbons; and
  - (g) bromochloromethane.
- (2) Any person in possession of the above ozone depleting substances at the date of coming operation of the regulations must:-

- (a) apply to the Department under regulation 12;
- (b) recover and recycle such substance or substances at a recovery and recycling facility for re-use; or
- (c) dispose such substance or substances at a destruction facility.

### **31. Moratorium**

The Minister may, by notice in the *Gazette*, declare a moratorium on stockpiled ozone depleting substances.

### **32. Offences**

- (1) A person is guilty of an offence if that person:
  - (a) contravenes regulations 3, 4, 5(1), 5(2)(b), 5(2)(d), 5(5), 5(7), 6, 9, 10, 11, 12, 13, 14, 15, 16, 17 or 30;
  - (b) fails to submit an annual report required under regulation 18;
  - (c) fails to submit an annual report required under regulation 19;
  - (d) fails to submit an annual report required under regulation 20;
  - (e) contravenes or fails to comply with a requirement of a moratorium published in terms of regulation 31;
  - (e) supplies false or misleading information in any application contemplated under these regulations;
  - (f) contravenes or fails to comply with a condition or requirement of an approval or permit issued in terms of these regulations.

### **33. Penalties**

- (1) A person convicted of an offence referred to in regulation 32 is liable --
  - (a) to imprisonment for a period not exceeding five years;
  - (b) an appropriate fine; or
  - (c) both a fine and imprisonment.

**34. Short title and commencement**

These regulations may be cited as the Ozone Depleting Substances Regulations, 2010, and take effect on the date of publication in the *Gazette*.

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**APPENDIX-A: CONTROLLED SUBSTANCES**


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DESCRIPTION OF CONTROLLED SUBSTANCES
1,1,1- Trichloroethane (methyl chloroform)
Bromomethane (Methyl Bromide)
Trichlorofluoromethane (CFC 11)
Dichlorodifluoromethane (CFC 12)
Trichlorotrifluoroethanes (CFC 113)
Dichlorotetrafluoroethanes (CFC 114)
Chlorotrifluoromethane
Pentachlorofluoroethane
Tetrachlorodifluoroethanes
Heptachlorofluoropropanes
Hexachlorodifluoropropanes
Pentachlorotrifluoropropanes
Tetrachlorotrifluoropropanes
Trichloropentafluoropropanes
Dichlorohexafluoropropanes
Chloroheptafluoropropanes
Other derivatives perhalogenated only with fluorine and chlorine: other
Bromochlorodifluoromethane (Halon 1211), bromotrifluoromethane (Halon 1301) and dibromotetrafluoroethanes (Halon 2402)
Chlorodifluoromethane (CFC 22)
Dichlorotrifluoroethanes
Chlorotetrafluoroethanes
Dichlorofluoroethanes
Dichlorodifluoroethanes
Dichloropentafluoropropanes
Other derivatives of methane, ethane or propane, halogenated only with fluorine and chlorine
Derivatives of methane, ethane or propane, halogenated only with fluorine and bromine
Other
Insecticides, containing bromomethane (methyl bromide) or bromochloromethane
Fungicides, other, containing bromomethane (methyl bromide) or bromochloromethane

Herbicides, anti-sprouting products and plant-growth regulators, other, containing bromomethane (methyl bromide) or bromochloromethane
Disinfectants, other, containing bromomethane (methyl bromide) or bromochloromethane
Other: other, containing bromomethane (methyl bromide) or bromochloromethane
Preparations and charges for fire-extinguishers; charged fire extinguishing grenades: other, containing bromochlorodifluoromethane, bromotrichloromethane or dibromotetrafluoroethanes
Other, containing methane, ethane or propane hydrobromofluorocarbons (HBFCs)
Other, containing methane, ethane or propane hydrochlorofluorocarbons (HCFCs)
Other, containing bromochloromethane
Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers: Containing methane, ethane or propane chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluorocarbons (HCFCs)
Containing methane, ethane or propane hydrochlorofluorocarbons (HCFCs), but not containing chlorofluorocarbons (CFCs)
Containing carbon tetrachloride, bromochloromethane or 1,1,1-trichloroethane (methyl chloroform)
Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products, not elsewhere specified or included); Containing chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluorocarbons (HCFCs), perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs)
Containing bromochlorodifluoromethane, bromotrifluoromethane or dibromotetrafluoroethanes
Containing hydrobromofluorocarbons (HBFCs)
Containing hydrochlorofluorocarbons (HCFCs), whether or not containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs)
Containing carbon tetrachloride
Containing 1,1,1-trichloroethane (methyl chloroform)
Containing bromomethane (methyl bromide) or bromochloromethane
Containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs)
Other



**APPENDIX-B: PHASE-OUT SCHEDULE FOR METHYL BROMIDE (MeBr)**

<b>YEAR</b>	<b>(%)RESTRICTION</b>	<b>REDUCED AMOUNT FROM PREVIOUS YEAR IN TONNES</b>	<b>CONSUMPTION ALLOWED IN TONNES</b>
<b>2004</b>	20% OF 2001 CONSUMPTION	232	<b>775</b>
<b>2005</b>	-20% OF 2004	155	<b>620</b>
<b>2006</b>	-20% OF 2005	124	<b>496</b>
<b>2007</b>	-20% OF 2006	99	<b>397</b>
<b>2008</b>	-20% OF 2007	79	<b>317</b>
<b>2009</b>	-20% OF 2008	63	<b>253</b>
<b>2010</b>	-20% OF 2009	50	<b>202</b>
<b>2011</b>	-20% OF 2010	40	<b>161</b>
<b>2012</b>	-20% OF 2011	32	<b>129</b>
<b>2013</b>	-20% OF 2012	26	<b>103</b>
<b>2014</b>	-20% OF 2013	21	<b>82</b>
<b>2015</b>	(0) ZERO	82	<b>0 (ZERO) with the provision that Critical Exemptions and Quarantine usage may be granted.</b>

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**APPENDIX-C: PHASE-OUT SCHEDULE FOR HYDROCHLOROFLUOROCARBONS (HCFCs)**


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<b>DEADLINE</b>	<b>REDUCTION</b>
2008	Monitor consumption
2009/2010	Baseline consumption established (average of 2 years)
2013	Consumption Freeze at baseline level
2015	10% reduction from baseline
2020	35% reduction from baseline
2025	67.5% reduction from baseline
2030	97.5% reduction from baseline
2030-2039	Maximum consumption 2.5% servicing only
2040	Full phase-out

**Maximum Annual Consumption of HCFCs 2008 – 2040**

<b>Year</b>	<b>Maximum Annual Consumption</b>
2008	Not applicable
2009	Not applicable
2010	Not applicable
2011	Not applicable
2012	Not applicable
2013	Baseline
2014	Baseline
2015	90% of baseline
2016	90% of baseline

2017	90% of baseline
2018	90% of baseline
2019	90% of baseline
2020	65% of baseline
2021	65% of baseline
2022	65% of baseline
2023	65% of baseline
2024	65% of baseline
2025	32.5% of baseline
2026	32.5% of baseline
2027	32.5% of baseline
2028	32.5% of baseline
2029	32.5% of baseline
2030	2.5% of baseline
2031	2.5% of baseline
2032	2.5% of baseline
2033	2.5% of baseline
2034	2.5% of baseline
2035	2.5% of baseline
2036	2.5% of baseline
2037	2.5% of baseline
2038	2.5% of baseline
2039	2.5% of baseline
2040	2.5% of baseline
2041	Zero